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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/824,035	04/03/2001	Nobuyuki Tanaka	WN-2316	8744
21254 7590 11/24/2008 MCGINN INTELLECTUAL PROPERTY LAW GROUP, PLLC 8321 OLD COURTHOUSE ROAD SUITE 200 VIENNA, VA 22182-3817				
EXAMINER VAN HANDEL, MICHAEL P				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 09/824,035	Applicant(s) TANAKA, NOBUYUKI
Examiner MICHAEL VAN HANDEL	Art Unit 2424

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 October 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-10, 12 and 14-23.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Chris Kelley/
Supervisory Patent Examiner, Art Unit 2424

Continuation of 7:

Applicant amended claims 16 and 17 as suggested by the examiner in the rejection under 35 USC 101. As such, the examiner hereby withdraws the rejection of claims 16 and 17 under 35 USC 101. The claims are rejected under 35 USC 103, as before, and the relevant citations in the rejection of the claims is the same as before.

Continuation of 11:

Regarding the examiner's rejection of claims 1-10, 12, and 14-23 under 35 USC 112, second paragraph, the applicant argues that the claim language is clear, since it recites, "a backup reproducing device having an audio decoder and a video decoder that decodes the digital content supplied from a mass memory unit, while the reproducing device periodically sends a first predetermined signal." The applicant argues that there is no contradiction between the recited limitation and "wherein the backup reproducing device starts the decoding when the backup reproducing device receives said first predetermined signal." The examiner respectfully disagrees. The examiner acknowledges that a first predetermined signal is received by the backup reproducing device to start the decoding, in a first place, and that the predetermined signal is then periodically sent while the audio decoder and video decoder of the backup reproducing device decodes the digital content; however, this is not what is being claimed. Applicant claims "a backup reproducing device having an audio decoder and a video decoder that decodes the digital content supplied from a mass memory unit, while the reproducing device periodically sends a first predetermined signal indicating progress of the reproducing device" and further claims "wherein the backup reproducing device starts the decoding when the backup reproducing device receives SAID first predetermined signal" (capitalized for emphasis). That is, the last claim limitation has antecedent basis in the previous mention of a predetermined signal, thus referring back to that previously mentioned signal; however, this previously mentioned signal is being sent while the backup reproducing device decodes the digital content. Thus, it is unclear what is meant by starting the decoding when the first predetermined signal is received by the backup reproducing device, since it appears that the backup device was already decoding while the reproducing device was sending the signal. As such, the examiner maintains that the claims fail to particularly point out and distinctly claim the subject matter, which applicant regards as the invention.

Regarding claims 1, 12, 14-17, and 22, the applicant argues that the combination of Morley et al., Takamori, and Brown et al. does not teach or suggest "the backup reproducing device starts the decoding when the backup reproducing device receives said first predetermined signal." Please note the rejection under 35 USC 112, second paragraph. As stated in the examiner's remarks in the Office Action mailed 9/04/2008, the examiner interprets "starting the decoding" as continuing the already started decoding process in light of the current claim language.

Further regarding claims 1, 12, 14-17, and 22, the applicant argues that one with ordinary skill in the art would not have combined Morley et al. with the teachings of Takamori and Brown et al. The applicant specifically argues that Takamori teaches away from the claimed invention that recites, "the reproducing device periodically sends a first predetermined signal indicating progress of reproducing of the reproducing device, directly to the video decoder of the backup reproducing device." The examiner respectfully disagrees. Takamori discloses a video switcher apparatus with a main unit for supplying video and audio signals and a back-up reserve unit including video and audio components identical to those in the main unit (col. 2, l. 16-20). Self-diagnostic portions 9 supervise the operating status of the main and reserve blocks. If any of the self-diagnostic portions detects a failure, the output of the applicable self-diagnostic portion causes the switching portion 5 to switch from the failed block to the other block (col. 2, l. 26-49). The examiner maintains that it would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify the decoder module of Morley et al. to include a back-up unit with identical video and audio components and a video switcher for switching between the decoder and the back-up system upon failure of the main unit, such as that taught by Takamori in order to avoid severe problems, such as stoppage of signal transmission (Takamori col. 1, l. 11-16; col. 3, l. 66-68; & col. 4, l. 1-2). That is, the examiner relies on Takamori to teach providing identical audio and video components as back-up components for primary audio and video components, so that the back-up can assume control in case of failure. The examiner relies on Brown et al. to teach that the reproducing device periodically sends a first predetermined signal indicating progress of reproducing of the reproducing device, directly to the video decoder of the backup reproducing device. Brown et al. discloses a fault recovery method where a message called a heartbeat is broadcast among processors once during every major processing cycle (see Abstract). Processors can act in a duplex standby mode, with one of the processors designated as the active processor and the other processor ready to become the active processor whenever needed. Both processors receive data from the same source (col. 5, l. 60-65 & Fig. 4) and perform the same functions at the same time (col. 9, l. 15-20). When the active processor fails, it terminates transmission of the heartbeat messages. The standby processor detects this condition and assumes the role of active processor (col. 9, l. 20-26). The examiner maintains that it would have been obvious to modify the primary video processor in the combination of Morley et al. and Takamori to transmit a heartbeat signal directly the second video processor, so that the secondary video processor becomes primary when it fails to detect a heartbeat signal, such as that taught by Brown et al. in order to allow spare processors to autonomously take over the functions of failed processors without being required to consult or obtain the approval of an executive processor (Abstract of Brown et al.).

Still further regarding claims 1, 12, 14-17, and 22, the applicant argues that adding the teachings of Takamori and Brown et al. to the device of Morley et al. would change the principle of operation of Morley et al., since the references teach distinct systems that have different structures, are for different purposes, and perform in different environments. The applicant specifically argues that the elements and functions of Takamori and Brown et al. are non-analogous to the device of Morley et al. The examiner respectfully disagrees. Morley et al. discloses using redundancy of components to provide backups in the distribution system. Some of the redundant components can be operated in a "standby" or "warm start" mode as desired for rapid selection and switch over when needed (p. 12, l. 7-9; p. 28, l. 15-19; p. 29, l. 21-32; p. 30, l. 1-17; p. 36, l. 12-24; & p. 38, l. 14-19). Morley et al. does not specifically disclose a backup reproducing device having an audio decoder and a video decoder that decodes the digital content supplied from a mass memory unit; however, Takamori discloses a video switcher apparatus with a main unit for supplying video and audio signals and a back-up reserve unit including video and audio components identical to those in the main unit (col. 2, l. 16-20). If any of the self-diagnostic portions of Takamori detects a failure, the output of the applicable self-diagnostic portion causes the switching portion to switch from the failed block to the other block (col. 2, l. 26-49). Since both Morley et al. and Takamori are directed towards audio and video reproducing systems with redundancy, the examiner

maintains that the functions and elements of the references are analogous. Brown et al. teaches a fault recovery mode where a message called a heartbeat is broadcast among processors once during every major processing cycle (see Abstract). Processors can act in a duplex standby mode, with one of the processors designated as the active processor and the other processor ready to become the active processor whenever needed. Both processors receive data from the same source (col. 5, l. 60-65 & Fig. 4) and perform the same functions at the same time (col. 9, l. 15-20). When the active processor fails, it terminates transmission of the heartbeat messages. The standby processor detects this condition and assumes the role of active processor (col. 9, l. 20-26). Since Brown et al. is also directed towards redundant systems for warm start in case of component failure, the examiner maintains that the functions and elements of Brown et al. are analogous to those of Morley et al. and Takamori.